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Via Electronic Mail and U.S. Mail

Brooke Miller-Levy
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento CA 95825-1898
Email: bmillerlevy@usbr.gov

Re: Questions regarding Central Valley Project Cost Allocation Study: Considerations on the Two Cost Allocation and Two-Period Repayment Approach (Dec. 12, 2014)

Dear Ms. Miller-Levy,

We are writing regarding the December 12, 2014 U.S. Bureau of Reclamation ("Reclamation") Issue Paper titled "Central Valley Project Cost Allocation Study: Considerations on the Two Cost Allocation and Two-Period Repayment Approach." The Issue Paper provides helpful insights into Reclamation's current efforts related to cost allocation for the Central Valley Project ("CVP"), and we appreciate having an opportunity to submit comments at this phase of Reclamation's process.

Our understanding is that the Two Cost Allocation and Two-Period Repayment Approach remains conceptual, and that, with respect to the second period, Reclamation has not yet determined what proportion of project costs would be allocated as reimbursable and non-reimbursable, or how the costs would be divided among project beneficiaries. This detailed information will be helpful in more fully evaluating the proposed cost allocation method. For now, the conceptual overview that the Issue Paper provides has raised several questions that we hope you can address:

- (1) Could the new allocation method result in any changes to the total amount of money that is paid into the CVP Restoration Fund each year? If so, can you explain any anticipated or potential changes?
- (2) Under the proposed method, it appears that a substantially higher percentage of project costs may be considered non-reimbursable than under the existing cost allocation method. How would implementation of the proposed method impact Reclamation's budget?

- (3) Would implementation of the proposed method lead Reclamation to seek repayment from any entity that is not currently subject to a repayment obligation?
- (4) Is continued reliance on a 2030 repayment completion deadline realistic in light of the amount of repayment that has occurred to date?

In addition to these basic questions, we are interested in better understanding the relationship between this effort and the cost allocation study that was completed in May 2001. The 2001 cost allocation study included an analysis of the "Contractors' Proposal," which entailed "account[ing] for the environmental reoperation of the CVP by creating a new environmental water use for the determination of repayment responsibilities of costs allocated to the water supply purpose." 2001 CVP Cost Allocation Study, Executive Summary at ES-2.¹ The Contractors' Proposal advocated that the existing allocation method did not adequately reflect environmental benefits that have been generated by the re-operation of the project in light of environmental laws including the Central Valley Project Improvement Act, the Endangered Species Act, and the 1994 Delta Water Quality Control Plan. *Id.* at ES-3.²

Reclamation rejected the Contractors' Proposal and determined that the exiting allocation method was the preferred approach. The Contractors' Proposal was inappropriate, Reclamation concluded, because (a) "unlike other provisions of the CVPIA wherein cost sharing arrangements and surcharges on water and power users have been specified, Congress neither directed that a new cost allocation study be undertaken as a result of likely reductions in water contract deliveries nor provided a cost allocation formula" (*id.*); (b) the Contractors' Proposal would delineate some water uses as environmental enhancement, but the uses are properly classified as mitigation, protection, and/or restoration (*id.*); (c) it could lead to double counting of water use because environmental water releases can also be used for other downstream beneficial uses (*id.* at ES-4); (d) fish and wildlife considerations predate modern environmental laws and were included in the initial CVP authorization (*id.*); and (e) pursuant to state law, CVP water rights are junior to state water quality requirements (*id.*). "In short," Reclamation concluded, "the introduction into the CVP cost allocation of an environmental water account proposed by the water and power contractors is not consistent with provisions of Federal law, Reclamation guidance on allocating costs, State water rights decisions, and would likely double count water use." *Id.*

While the Two Cost Allocation and Two-Period Repayment Approach differs from the Contractors' Proposal discussed in the 2001 cost allocation study, it seems that most, if not all, of Reclamation's stated reasons for rejecting the Contractors' Proposal apply equally to the current proposal. Are there ways in which the current proposal is materially different from the Contractors' Proposal that would eliminate these concerns?

¹ Available at <http://www.usbr.gov/mp/cvp/laws.html>.

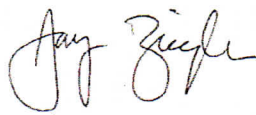
² The Contractors' Proposal focused on the 800,000 acre-feet of water dedicated annually by section 3406(b)(2) of the CVPIA to fish and wildlife purposes. 2001 CVP Cost Allocation Study, Executive Summary at ES-3.

We appreciate your taking the time to consider these issues, and look forward to any responses you are able to share with us. Please feel free to contact us if you would like to discuss these matters further.

Sincerely,



Rachel Zwillinger
Defenders of Wildlife



Jay Ziegler
The Nature Conservancy



Jeffrey Volberg
California Waterfowl Association



Michael Lynes
Audubon California



Mark Biddlecomb
Ducks Unlimited



Ric Ortega
Grassland Water District & Grassland
Resource Conservation District